



Elder Law: Discuss medical care, final plans with loved ones this holiday

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By Julian Gray and Frank Petrich

With all of the holiday goings on, it's admittedly hard to focus on the coming New Year. Nonetheless, we are doing this annual New Year's Resolutions column as a reminder of things that should be addressed, if not already done so, for the New Year.

These items are in addition to the olde standards of losing weight, getting more exercise, stopping smoking, etc. (and may be even more important).

In our elder law practice, we commonly deal with family crises -- crises that, if not necessarily avoidable, at least could have been minimized if some of the subject areas mentioned below would have been addressed in a more timely manner.

The "Good Olde Family Holiday Gathering" can be an ideal time to discuss with close family members (and before the real partying begins) in a frank and open way some of these topics (obviously, not all of these topics have to be discussed with everyone, but, at least with those who may be called upon to implement and/or be affected by them):

Medical Care -- Do you have a health care power of attorney and/or advance directive for health care? If not, why not? A recent Pew Research Center paper on "Views of End-of-Life Medical Treatments" found 27 percent of adults say they have not given very much thought or no thought as to how they would like physicians and other care givers to deal with their medical treatment at the end of their lives. The survey further found almost 25 percent of those 75 and older have never talked with anyone about nor written down their end of life wishes.

Who do you want to make decisions for you if you are unable to do so? Have you discussed with those individuals what your wishes are? Are they willing to step into your shoes if called upon? Find out.

Your Estate Plan -- Do you have a will or a trust? If you do, when's the last time you reviewed it? Are your little kids now adults, with spouses (and maybe second spouses) and kids of their own? Who do you want them to get what you have and how do you want them to get it -- outright after you die or in the form of a trust to help protect them from wasting it all? Do the "right" people know what you have and where it is?

Do you have a family member with "special needs" who is or may be receiving public benefits such as SSI and Medicaid? How will these needs be best met after you're gone, especially if you're the caregiver for that person? Have you looked at a special needs trust to benefit that person with special needs?

Let one or more people know where your estate planning documents are located so those documents can be accessed by them if you're unable to do it yourself. Are they in a safe deposit box? Does someone know where the safe deposit box is and who has a key for it?

Have you discussed with anyone the funeral arrangements you want? Write up your own obituary as it may be a lot better than the one someone may write for you.

Are You a Veteran? -- Veterans and family member of veterans can be eligible for a wide assortment of benefits for healthcare and living assistance both at home and in a community/facility setting. The key is to find the veteran's discharge papers (Form DD- 214). Do you know where it is? If not, find it or order one for free at www.va.gov.

IRAs -- Are you subject to required minimum distributions (RMD's)? Are you taking your RMDs? If not, you are subject to a rather severe tax penalty (the amount not withdrawn is taxed at 50 percent). Remember that IRAs are normally transferred by beneficiary designation and not your will. You can also use a trust for this purpose.

Review your IRA beneficiary designations on a periodic basis the same as you would your will, power of attorney and health care directives to help insure you've got the right people in the right places. Jan. 1 of each year is a good day to do this. If there are no changes, just put the documents back where you got them.

Life Insurance Policies -- Do you have enough coverage? Term insurance is relatively cheap and can provide peace of mind if you have a growing family. Some policies could have been purchased years ago. Anyone remember the "debit man" (the insurance agent who collected small dollar amounts weekly or monthly from your parents)?

If so, verify that the policy you think you have still exists. Did the company "demutualize" and issue stock to its policy owners (which may be an asset for Medical Assistance purposes)? Many of these questions can be answered by requesting an "In Force Illustration" of your policy from the insurance company or your agent. It should be free and can tell you about the "health" of your life insurance policy. And, like the IRAs, review the primary and contingent beneficiary designations as life insurance does not need to pass through a will.

Long Term Care Considerations -- Are you concerned about your or your parents' ability to "age-at-home?" If you are concerned, are you aware of the types of alternate living arrangements that might be available? Do you or your children know where these facilities are and have you or they toured them in advance of any need?

Taxes -- Every year brings a different tax climate and rule changes; 2014 is no different.

Figure out ways to keep up with these changes as they can materially affect your finances and usually not in a positive way.

As to getting started on these resolutions, remember the Olde Slovenian proverb: "A journey of a thousand miles begins with getting out of bed!"

Have a happy, healthy and well resolved New Year!

Julian Gray and Frank Petrich are both certified elder law attorneys with over 55 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions to elderlawguys@grayelderlaw.com and visit their website at www.grayelderlaw.com